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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Report of the Committee on the Rights of Persons with Disabilities on its twentieth session (27 August–21 September 2018)

I. States parties to the Convention and the Optional Protocol thereto

1. As at 21 September 2018, the date on which the twentieth session closed, there were 177 States parties to the Convention on the Rights of Persons with Disabilities and 92 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available on the website of the Office of Legal Affairs of the Secretariat.

II. Opening of the twentieth session of the Committee

2. The twentieth session opened in a public meeting with welcoming remarks by the Chair of the Committee. The opening statement of the Office of the United Nations High Commissioner for Human Rights (OHCHR) was delivered by the Deputy High Commissioner for Human Rights and is available on the Committee's website. The Chair also delivered a statement and submitted a report on intersessional activities, also available on the Committee's website.

3. The Committee reviewed and adopted the provisional agenda and tentative programme of work for the twentieth session (CRPD/C/20/1).

III. Membership of the Committee

4. The list of members of the Committee as at 21 September 2018, indicating the duration of their terms of office, is available on the Committee's website.

IV. Working methods

5. The Committee discussed various issues related to its working methods and adopted the decisions contained in annex I to the present report.

V. Activities related to general comments

6. On 27 August 2018, the Committee held a public dialogue with organizations of persons with disabilities and civil society organizations on its draft general comment No. 7 on the participation of persons with disabilities, including children with disabilities, through

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their representative organizations, in the implementation and monitoring of the Convention. The Committee adopted its general comment No. 7 (2018) at its 433rd meeting, on 21 September 2018.

7. The Committee discussed the possibility of developing a general comment on article 11 of the Convention on situations of risk and humanitarian emergencies. The Committee decided to leave the final decision as to whether to prepare such a general comment to the new members of the Committee, but established a working group with a view to starting research and making relevant contacts with key stakeholders on the topic.

VI. Activities related to the Optional Protocol

8. On 31 August 2018, the Committee examined three communications. With regard to *Y v. United Republic of Tanzania* (CRPD/C/20/D/23/2014), the Committee found that the State party's decisions and actions related to the violent acts against the author, a child with albinism, amounted to a violation of articles 5, 7, 8, 15, 16, 17 read alone and in conjunction with article 4, and 24 of the Convention. In *J.H. v. Australia* (CRPD/C/20/D/35/2016), the Committee concluded that the State party violated the author's rights under articles 5 (2) and (3) and 21 (b) and (e) of the Convention. While considering that, when assessing the reasonableness and proportionality of accommodation measures, States parties enjoyed a certain margin of appreciation, the Committee noted that in each case the courts of States parties must ensure that that assessment was conducted thoroughly and objectively before concluding that the support and adaptation measures would constitute a disproportionate or undue burden. In *Domina and Bendtsen v. Denmark* (CRPD/C/20/D/39/2017), the Committee found that the rejection by the relevant domestic authorities of the authors' application for family reunification on the basis of criteria that were indirectly discriminatory for persons with disabilities had impaired or nullified the authors' exercise and enjoyment of the right to family life on an equal basis with others, in violation of their rights under article 5 (1) and (2) read alone and in conjunction with article 23 (1) of the Convention.

9. On 20 September 2018, the Committee examined *Al Adam v. Saudi Arabia* (CRPD/C/20/D/38/2016). It concluded that the State party had failed to fulfil its obligations under article 13 (1) read alone and in conjunction with articles 4, 15, 16 and 25 of the Convention. The Committee adopted the report of the Special Rapporteur on new communications on the complaints received since the nineteenth session and the status of registered communications.

10. The Committee considered matters related to inquiry proceedings pursuant to articles 6 and 7 of the Optional Protocol.

VII. Other decisions

11. The Committee adopted the present report on its twentieth session.

12. The full list of the decisions adopted by the Committee is available in annex I to the present report.

VIII. Future sessions

13. The twenty-first session of the Committee is scheduled to be held from 11 March to 5 April 2019 and will be followed by the eleventh session of the pre-sessional working group, from 8 to 11 April 2019.

IX. Accessibility of the Committee's meetings

14. Remote captioning was provided by the United Nations in all official public meetings and in 23 private meetings. International Sign interpretation was provided during

public meetings. National sign language interpretation was provided during the dialogues with Algeria, Malta and the Philippines. Webcasting was provided during public meetings.

15. Fourteen core documents of the Committee in plain English commissioned by the United Nations Office at Geneva were posted on the Committee's website in advance of the twentieth session. As a result of an additional project, five general reference documents of the Committee in plain English would be issued later. On 30 August 2018, the Committee, together with the Division of Conference Management, organized an internal meeting to discuss the accessibility of documents, in particular with respect to Easy Read and plain language.

X. Cooperation with relevant bodies

A. Cooperation with United Nations organs and specialized agencies

16. At the opening meeting of the session, representatives of the following United Nations agencies, departments and programmes made statements: the Committee on Victim Assistance of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, the International Labour Organization, OHCHR, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) on behalf of the Inter-Agency Support Group on the Convention on the Rights of Persons with Disabilities, the United Nations Human Settlements Programme, the World Health Organization (WHO) and the World Intellectual Property Organization on behalf of the Accessible Books Consortium. The Special Rapporteur on the rights of persons with disabilities also provided an update of her activities.

17. The Bureau of the Committee met with the Special Rapporteur on the rights of persons with disabilities to discuss matters in relation to coordination of the mandate of the Special Rapporteur with that of the Committee.

18. On 31 August 2018, the Committee celebrated the tenth anniversary of the entry into force of the Convention and activities of the Committee. Panellists included Maria Soledad Cisternas Reyes, Special Envoy of the Secretary-General on Disability and Accessibility and former Chair of the Committee; Ron McCallum, former Chair of the Committee; the Special Rapporteur on the rights of persons with disabilities; the Public Defender of Georgia, on behalf of the Global Alliance of National Human Rights Institutions; and the Secretary of the Human Rights Council task force on secretariat services, accessibility and use of information technology.

19. On 13 September 2018, the Committee celebrated the first International Day of Sign Languages (23 September 2018) to increase awareness and recognition of the importance of sign languages as part of linguistic and cultural diversity and as a precondition to realizing the rights of persons with disabilities.

20. On 19 September 2018, the Committee met with the Independent Expert on the enjoyment of human rights by persons with albinism, and co-sponsored with her mandate a photography exhibition on witchcraft and human rights. The Committee also participated in a side event on universal access to rehabilitation, organized by WHO.

21. On 20 September 2018, the Committee met with the Joint Inspection Unit to provide input for its project on enhancing accessibility for persons with disabilities to conferences and meetings of the United Nations system.

22. On 21 September 2018, the Committee held its second joint meeting with the Committee on the Rights of the Child. The main objectives of the meeting were to discuss new ways and means of reinforcing the coherence of both Committees' jurisprudence on children with disabilities, and to adopt a common position in advance of the subsequent Human Rights Council annual full-day meeting on the rights of the child — which would focus on empowering children with disabilities for the enjoyment of their human rights.

including through inclusive education — and in the context of the global study on children deprived of liberty.

B. Cooperation with non-governmental organizations and other bodies

23. At the opening of the session, the Committee was addressed by Autistic Minority International, the International Disability Alliance and Inclusion Europe. During the discussion on draft general comment no. 7, the Committee was addressed by representatives of Autistic Minority International, Child Rights Connect, insieme Schweiz, People with Disability Australia representing Disabled People's Organizations Australia and the Sexual Rights Initiative. The Committee also received briefings from 143 organizations of persons with disabilities from the States parties whose reports were considered by the Committee during the session.

24. Regarding the participation and engagement of independent monitoring frameworks and national human rights institutions from States parties whose reports were considered by the Committee during its twentieth session and the pre-sessional working group at its tenth session, 13 institutions submitted alternative reports on the implementation of the Convention. Of those institutions, two have been explicitly designated independent monitoring frameworks under article 33 (2) of the Convention. Eight institutions participated in private closed briefings on country situations and three participated in the dialogue between the Committee and the delegations of States parties.

25. A thematic side event on refugees with disabilities was organized by Mr. McCallum. The Committee also held a side event organized by Women Enabled International and a side event on disability and armed conflict with the Geneva Academy of International Humanitarian Law and Human Rights.

XI. Consideration of reports submitted in accordance with article 35 of the Convention

26. The Committee considered the initial reports of Algeria (CRPD/C/DZA/1), Bulgaria (CRPD/C/BGR/1), Malta (CRPD/C/MLT/1), the Philippines (CRPD/C/PHL/1), Poland (CRPD/C/POL/1), South Africa (CRPD/C/ZAF/1) and the former Yugoslav Republic of Macedonia (CRPD/C/MKD/1). The Committee adopted concluding observations on those reports, which are available on its website.

27. The Committee adopted lists of issues under the simplified reporting procedure in relation to Austria (CRPD/C/AUT/QPR/2-3), Azerbaijan (CRPD/C/AZE/QPR/2-3), Germany (CRPD/C/DEU/QPR/2-3), Mongolia (CRPD/C/MNG/QPR/2-3) and Sweden (CRPD/C/SWE/QPR/2-3).

28. The Committee adopted the list of issues in relation to the initial report of Iraq (CRPD/C/IRQ/Q/1).

XII. Follow-up reports

29. While the Committee had decided at its nineteenth session to put on hold its follow-up activities in relation to concluding observations, it welcomed the follow-up reports received from Colombia, Montenegro and the United Kingdom of Great Britain and Northern Ireland, available on its website. The Committee would continue to welcome all reports on follow-up to concluding observations adopted prior to its decision of the nineteenth session. The Committee would continue to identify priority recommendations to be implemented by States parties in its concluding observations.

Annex I

Decisions adopted by the Committee at its twentieth session

1. The Committee adopted concluding observations in relation to the initial reports of the following States parties: Algeria (CRPD/C/DZA/CO/1), Bulgaria (CRPD/C/BGR/CO/1), Malta (CRPD/C/MLT/CO/1), Philippines (CRPD/C/PHL/CO/1), Poland (CRPD/C/POL/CO/1), South Africa (CRPD/C/ZAF/CO/1) and the former Yugoslav Republic of Macedonia (CRPD/C/MKD/CO/1).

2. The Committee adopted lists of issues under the simplified reporting procedure in relation to the following States parties: Austria (CRPD/C/AUT/QPR/2-3), Azerbaijan (CRPD/C/AZE/QPR/2-3), Germany (CRPD/C/DEU/QPR/2-3), Mongolia (CRPD/C/MNG/QPR/2-3) and Sweden (CRPD/C/SWE/QPR/2-3).

3. The Committee adopted the list of issues in relation to the initial report of Iraq (CRPD/C/IRQ/Q/1).

4. The Committee considered matters related to its communication and inquiry procedures pursuant to articles 6 and 7 of the Optional Protocol to the Convention. The Committee considered four communications. It found violations in all of them. A summary of the Views and decisions of the Committee can be found in annex II to the present report.

5. The Committee adopted its general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention.

6. The Committee decided to establish a working group on article 11 of the Convention, on situations of risk and humanitarian emergencies, and to adopt a decision at its twenty-first session on the topic of its next general comment.

7. The Committee adopted a statement, jointly with the Committee on the Elimination of Discrimination against Women, on guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities.

8. The Committee decided to endorse the statement on human rights defenders prepared by a group of Chairs, Vice-Chairs and members of the human rights treaty bodies, together with the Special Rapporteur on the situation of human rights defenders.

9. The Committee adopted a statement calling on States parties to the Convention and member States of the Council of Europe to oppose the adoption of the draft additional protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

10. The Committee decided to appoint Danlami Umaru Basharu as interim Chair of the Committee as of 1 January 2019.

11. The Committee decided to appoint Mr. Basharu, Robert George Martin and Jonas Ruskus as members of the joint working group with the Committee on the Rights of the Child on children with disabilities.

12. The Committee decided to appoint Ahmad Al-Saif as focal point on communications.

13. The Committee decided to appoint Mr. Basharu and Monthian Buntan as focal points on the 2020 review of the treaty body strengthening process.

14. The Committee decided to appoint Mr. Buntan and László Gábor Lovászy as focal points for the United Nations system-wide policy and monitoring framework on disabilities.

15. The Committee decided to appoint Mr. Basharu as focal point for the upcoming Global Disability Summit.

16. The Committee decided to appoint Mr. Martin as interim focal point on reprisals.

17. The Committee decided to invite representatives of the International Organization for Standardization, Rehabilitation International and the Social Development Division of the Economic and Social Commission for Asia and the Pacific to brief the Committee at the opening of its twenty-first session.

18. The Committee decided to include the report of its 10 years of activities in its next biennial report to the General Assembly.

19. The Committee adopted a new time policy for its interactive dialogues with State parties with a view to maximizing the time available for dialogues and making them more interactive and productive. The time policy could be obtained from the secretariat.

20. The Committee decided to maintain English, Russian and Spanish as the official working languages of the Committee in 2019.

21. With regard to the reports of States parties to be considered at its twenty-first session and country rapporteurs, the Committee decided to consider the reports of the following States parties: Cuba (Martin Babu Mwesigwa and Amalia Eva Gamio Ríos), the Niger (Mr. Basharu), Norway (Mr. Buntan), Rwanda (Samuel Njuguna Kabue), Saudi Arabia (Imed Eddine Chaker), Senegal (Mr. Basharu), Turkey (Mr. Lovászy and Mr. Chaker) and Vanuatu (Mr. Kabue and Mr. Martin) under its regular reporting procedure, and Spain (Mr. Ruskus and Rosemary Kayess) under the simplified reporting procedure.

22. The Committee also decided to adopt lists of issues under its simplified reporting procedure in relation to Belgium (Mr. Chaker), the Cook Islands (Mr. Kabue), Czechia (Jun Ishikawa) and Denmark (Mr. Mwesigwa). It also decided to adopt a list of issues in relation to Iraq. The Committee instructed its secretariat to inform all concerned permanent missions of those State parties.

23. With regard to the reports of States parties to be considered by the pre-sessional working group at its eleventh session, the Committee requested its working group to adopt the following lists of issues: Albania (Mr. Lovászy), Bangladesh (Mr. Basharu), Estonia (Mr. Ruskus and Mr. Martin), Greece (Mr. Lovászy and Markus Schefer), Jamaica (Mr. Basharu), India (Mr. Buntan), Myanmar (Mr. Ishikawa) and Kuwait (Mr. Al-Saif). The Committee instructed its secretariat to inform all concerned permanent missions of those States parties.

24. The Committee adopted the report on its twentieth session.

Annex II

Summary of the Views and Decisions adopted by the Committee regarding communications submitted under the Optional Protocol to the Convention on the Rights of Persons with Disabilities

Domina and Bendtsen v. Denmark

1. The Committee examined the communication in the case of *Domina and Bendtsen v Denmark* (CRPD/C/20/D/39/2017). The authors of the communication were Iuliia Domina, a national of Ukraine, and Max Bendtsen, a national of Denmark, a married couple with a son born in 2015. The authors claimed that the rejection of their application for family reunification amounted to a violation of their rights under articles 5 and 23 of the Convention. The male author has brain damage following a car accident in 2009. On that basis, he had been receiving social benefits since May 2009, as he could not support himself through employment. On 30 May 2013, the authors had applied for family reunification and a residence permit for the female author in Denmark based on their marriage. The authors' application for family reunification had been rejected by the State party authorities on the basis of section 9 (5) of the Danish Aliens (Consolidation) Act according to which a residence permit based on family reunification could not be granted if the applicant's spouse had received social benefits within a period of three years prior to the application. The authors claimed that that policy violated their rights under articles 5 and 23 of the Convention. They argued that the requirement of being able to support oneself financially in order to be granted family reunification constituted a barrier for persons with disabilities to enjoy the right to family life on an equal basis with others. The authors further noted that their young son was fully dependent on the female author, because the male author, on account of his disability, was unable to take care of him without assistance. They argued that the deportation of the female author to Ukraine would therefore irreparably harm the family life of the authors and their child.

2. In its considerations, the Committee recalled that a law that was applied in a neutral manner could have a discriminatory effect when the particular circumstances of the individuals to whom it was applied were not taken into consideration. It noted that the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention could be violated when States parties, without objective and reasonable justification, failed to treat differently persons whose situations were significantly different. The Committee further recalled that in cases of indirect discrimination, laws, policies or practices that appeared neutral at face value had a disproportionately negative impact on persons with disabilities. The Committee noted that, in the present case, the authors' application for reunification had been rejected as the male author had not met the requirement of having received no social security benefits in the three-year period prior to the application. It further noted that it was undisputed that the author had received those benefits as a result of his impairment. The Committee had therefore found that the requirement of self-support under paragraph 9 (5) of the Aliens Act had disproportionally affected the male author as a person with a disability and had resulted in him being subjected to indirectly discriminatory treatment. The Committee concluded that the fact that the relevant domestic authorities had rejected the authors' application for family reunification on the basis of criteria that were indirectly discriminatory against persons with disabilities had had the effect of impairing or nullifying the authors' enjoyment and exercise of the right to family life on an equal basis with others, in violation of their rights under article 5 (1) and (2) read alone and in conjunction with article 23 (1) of the Convention.

Y v. United Republic of Tanzania

3. The Committee examined the communication in the case of *Y v. United Republic of Tanzania* (CRPD/C/20/D/23/2014). The author of the communication was Y, a Tanzanian

national with albinism. He claimed to be a victim of violations by the State party of his rights under articles 4, 5, 7, 8, 14, 15, 16, 17 and 24 of the Convention. Following the increase in killings and violence against persons with albinism, the author had stopped attending school in 2008, for fear of being killed on the way. In 2010, a neighbour had forcibly shaved his hair. He had submitted a complaint to the police, but his case had not been investigated. In October 2011, when the author had been 12 years old, he had been attacked in Geita Region by a man with a machete, who had stolen three of the fingers of his right hand. The attacker had also hacked the author's left shoulder with the machete, leaving him unable to use his right hand and left arm. The State party had not provided him with any medical aid or rehabilitation. Later, in 2012, a local non-governmental organization, Under the Same Sun, which had been taking care of him, had brought the author back to school. However, after two years without access to formal education, the author had faced great difficulties and he was still unable to read or write properly. The State party had initiated an investigation into the crime against the author. However, the charges had been dropped for lack of evidence and the case still met with total impunity more than six years after the criminal attack that he had suffered. The author submitted that he had been attacked because of the belief that the body parts of a person with albinism provided wealth and prosperity.

4. The State party submitted that the complaint should be held inadmissible for non-exhaustion of domestic remedies. However, the Committee concluded that the domestic remedies had been unduly prolonged and unavailable in the author's case.

5. As to the merits of the case, the Committee noted that the author had been the victim of a violent crime that matched the characteristics of a practice exclusively affecting persons with albinism. The Committee took the view that the State party's failure to prevent and punish such acts had resulted in a situation that put the author and other persons with albinism in a situation of particular vulnerability and prevented them from living in society on an equal basis with others, in violation of article 5 of the Convention.

6. The Committee noted the author's claim that the State party had failed to pay adequate attention to his particular vulnerability as a child with albinism, and observed that by failing to provide protection to the author despite the complaint that he had submitted to the police after the first attack, and to provide him with the medical assistance and rehabilitation after the second attack, the State party had breached its obligations under article 7 of the Convention.

7. Regarding the author's claims under article 8 of the Convention, the Committee observed that the State party's inactivity and passivity amounted to an implicit acceptance of the perpetuation of the heinous crimes committed in its jurisdiction against persons with albinism. The Committee also considered that the suffering experienced by the author, owing to the lack of action by the State party to allow effective prosecution of the suspected perpetrators of the crime, had become a cause of revictimization and amounted to psychological torture and/or ill-treatment, in violation of articles 15 and 16 of the Convention.

8. The Committee considered that the failure by the State party to take all necessary measures to prevent acts of violence similar to those experienced by the author and to efficiently investigate and punish the perpetrators of those acts in the author's case amounted to a violation of his rights under article 17, read in conjunction with article 4 of the Convention. Lastly, it observed that the State party had not provided the author with any assistance and had not adopted any form of reasonable accommodation to enable him to go to school, and that as a result he had been deprived of his right to education until a private NGO had provided him with the support he needed. For those reasons, the Committee found that, in the circumstances of the present case, the State party had violated the author's rights under article 24 (2) (b) and (c) of the Convention.

J.H. v. Australia

9. The Committee examined the communication in the case of *J.H. v. Australia* (CRPD/C/20/D/35/2016). The author was an Australian citizen who had been born deaf and used Australian Sign Language (Auslan) as her native language. Between April and May

2014, the author had been summoned by the Department of the Attorney General in Perth to attend jury service in Western Australia District Court on 3 June 2014. The author had informed the Department of the Attorney General of her circumstances and that she required an Auslan interpreter to enable her to perform her jury duty. She had also informed the jury services that Auslan interpreters could be booked through Sign Language Communications Western Australia at the Western Australia Deaf Society. The manager of jury services at the Department of the Attorney General had contacted the author to ask whether she required the assistance of an Auslan interpreter or a suitable hearing aid device. On the same day, the author had responded that she would require an Auslan interpreter. The manager had then informed the author that she would be excused from the summons: given the requirements of the Juries Act 1957 of Western Australia and the overriding necessity to afford a fair trial to the accused, including the preservation of the secrecy of jury deliberations, the court was unable to provide the author with the necessary means to enable her to serve effectively as a juror.

10. The author had responded to the manager, raising concerns about the domestic authorities' decision to excuse her. The author had noted that the manager had previously asked whether she could use technological hearing devices or if she had required an Auslan interpreter, and that under the Western Australia Language Services Policy, state agencies, including district courts, were required to provide interpreters. The manager had responded that his decision had not been related to financial impediments, and that he had not considered the author to be a burden on the court system. He had stated that the main rationale of his decision had been to provide a system that was fair to the accused and complied with the applicable legislation.

11. In February 2015, the author had lodged a complaint, under sections 66A and 66K of the Equal Opportunity Act 1984 of Western Australia, with the state's Equal Opportunity Commission. The Commission had found that the Department of the Attorney General, in its exercise of a statutory duty, was acting directly as an arm of the government rather than as a provider of a service to the community, and that the complaint therefore fell outside the scope of the Equal Opportunity Act. The author's case could not be referred to the State Administration Tribunal under the Equal Opportunity Act. As the decision had not constituted an error of law, no appeal could be made to the Supreme Court and no other remedies were available.

12. The author submitted that the State party had violated articles 5 (2) and (3) of the Convention by failing to provide reasonable accommodation to prevent discrimination against her on the basis of disability, and article 12 (2) and (3) of the Convention by failing to take appropriate measures to provide her with the support that she required to perform her jury duty. The author had added that her rights under article 21 of the Convention had been violated as a result of the fact that she had been prevented from performing her jury duty.

13. The State party had submitted that the author's claim under article 12 of the Convention should be held inadmissible *ratione materiae*, or alternatively on the basis of being manifestly ill-founded and not sufficiently substantiated in accordance with article 2 (e) of the Optional Protocol to the Convention, and that the author's claims under articles 5, 12 and 21 of the Convention were without merit.

14. The Committee recalled its general comment No. 1 (2014) on equal recognition before the law, according to which legal capacity included the capacity to be both a holder of rights and an actor under the law: legal capacity to be a holder of rights entitled a person to full protection of his or her rights by the legal system, and legal capacity to act under the law recognized that person as an agent with the power to engage in transactions and to create, modify or end legal relationships. It noted that the manager had expressly explained to the author that the authorities did not consider deaf jurors to be a burden for the administration of justice and that the State party had not at any time questioned the author's legal capacity to perform jury duty. Accordingly, the Committee concluded that the author's claims were inadmissible under article 2 (b) of the Optional Protocol.

15. Regarding the author's allegations under articles 5 and 21 of the Convention, the Committee considered that, when assessing the reasonableness and proportionality of

accommodation measures, States parties enjoyed a certain margin of appreciation. However, the courts of States parties must ensure that that assessment was conducted thoroughly and objectively, covering all the pertinent elements, before concluding that the support and adaptation measures would constitute a disproportionate or undue burden. The Committee observed that the adjustments provided by the State party for persons with hearing impairments would not have enabled the author to participate in a jury on an equal basis with others. However, it had also noted that the State party had not provided the estimated cost of the requested accommodation for the author, or any data that would enable the competent authorities to analyse the reasonableness and proportionality of the requested accommodation in the specific circumstances of the case. The Committee had also noted that the provision of Auslan interpretation was a common accommodation, used by Australian deaf persons in their daily life, and that the author had indicated to the State party's authorities how to book Auslan interpreters when she had informed them about her hearing impairment. The Committee therefore considered that the State party's arguments were not sufficient to conclude that providing the author with Auslan interpretation would have amounted to a disproportionate or undue burden. Further, while the confidentiality principle of jury deliberations must be observed, the State party did not provide any argument to justify that no adjustment, such as a special oath before a court, could be made to enable Auslan interpreters to perform their functions without affecting the confidentiality of the jury's deliberations. The Committee concluded that the State party had violated the author's rights under article 5 (2) and (3) of the Convention.

16. As to the author's contention that the State party had violated its obligations under article 21, the Committee recalled that, pursuant to article 21 (b), States parties must take all appropriate measures to ensure that persons with disabilities could exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication by accepting and facilitating the use of all accessible means and formats of communication by persons with disabilities in official interactions. It further recalled that article 21 (e) stipulated that such appropriate measures included recognizing and promoting the use of sign languages. In that context, the Committee considered that a juror was a person holding a public responsibility in the administration of justice in interaction with others, and that such interaction constituted "official interactions" within the meaning of article 21. In view thereof, the Committee considered that the refusal to provide the author with the format of communication that she needed to enable her to perform jury duty, and therefore to express herself in official interactions, had amounted to a violation of article 21 (b) and (e) of the Convention.

Al Adam v. Saudi Arabia

17. The Committee examined the communication in the case of *Al Adam v. Saudi Arabia* (CRPD/C/20/D/38/2016). When he had been a child, the author had suffered an injury and had been left with a partial hearing impairment in his right ear. The condition of that impairment had been stable. On 8 April 2012, Saudi security forces had arrested him at a checkpoint and transported him to Al-Qatif police station, where he had been repeatedly subjected to *falaqa*, a method of torture whereby the detainee was beaten with a stick on the soles of the feet. For several days, he had been unable to walk. After two weeks of detention at Al-Qatif police station, the author had been transferred to the General Directorate of Investigation, in Al Dammam, where he had been put in solitary confinement and tortured again. A torturer had thrown him on the floor and, as he had been lying face down, had kicked him while wearing shoes forcefully on his back and kicked him in the face and other parts of his body. In addition, a torturer had stepped with his shoes on the author's fingers and toes and crushed them, resulting in the removal of a fingernail and a toenail. As a result of those acts, his hearing impairment had started to worsen. From that day on, the author had requested access to medical services.

18. Some four and a half months later, the Saudi authorities had transported the author to a military hospital for a routine health check. The doctor had said that the author had suffered from hearing loss in his right ear, and that urgent surgery was necessary to prevent permanent and complete hearing loss. The prison administration had left the author untreated for six months, during which his hearing had progressively worsened. Six months

later, the author had been taken to another appointment with a doctor, who had stated that his condition had worsened to the point that he could no longer hear in his right ear. The doctor had further stated that, at that point, surgery could not fix the author's hearing. The State party's authorities had been made aware of the author's deteriorating hearing, but had taken no action in that regard. Additionally, since the beginning of his detention, the author had had no access to legal counsel, meaning that he had been deprived of the support of a lawyer, including in gaining access to the necessary medical services. On approximately 5 September 2016, the author had been prosecuted before the Specialized Criminal Court in Riyadh. He had then been allowed to appoint a lawyer, although he had not been able to have any contact with him. The public prosecutor had requested the death penalty against the author. The author submitted that all available domestic remedies had been exhausted, and that the situation amounted to a violation of his rights under articles 4, 13 (1), 15 (1), 16 (1) and (4) and 25 (a) of the Convention.

19. In its observations on the admissibility of the communication, the State party acknowledged that the author remained in detention at the General Directorate of Investigation, in Al Dammam, and submitted that the communication should be held inadmissible because the same matter was pending before four Special Rapporteurs of the Human Rights Council, as well as for non-exhaustion of domestic remedies and for lack of substantiation. In that regard, the Committee recalled that the mandates of Special Rapporteurs were to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, but did not generally constitute a procedure of international investigation or settlement within the meaning of article 2 (c) of the Optional Protocol. As to the State party's argument that the author should have submitted his case to the Ministry of the Interior (crime-control bodies), the Office of Public Prosecution, the director of the prison in which he was detained, the "competent court", the National Society for Human Rights and the Saudi Human Rights Commission, the Committee noted the author's submission that none of those remedies would have been efficient and available in his case, and that the State party had not provided any information that would have demonstrated the availability and efficiency of the remedies that it referred to in the case of the author. In view thereof, the Committee concluded that the remedies referred to by the State party would not have been available for the author and that the communication was admissible under article 2 (d) of the Optional Protocol. As to the State party's submission that the complaint was not supported by any evidence and should therefore be held inadmissible for lack of substantiation, the Committee considered that, for the purposes of admissibility, the author had sufficiently substantiated his claims under articles 13 (1), 15, 16 and 25, read alone and in conjunction with article 4, of the Convention, and therefore declared the communication admissible.

20. As to the merits of the case, the Committee noted that, despite clear signs that the author had been tortured and the complaints by his family and representatives in that connection, the State party had not presented any information to demonstrate that its authorities had conducted an effective investigation into those specific allegations. The Committee observed that none of those allegations had been refuted by the State party and considered that due weight must be given to the author's allegations. In view thereof, the Committee concluded that the facts before it disclosed a violation of his rights under articles 15 and 16 of the Convention.

21. The Committee further noted the author's allegation under article 13 (1) of the Convention that (a) he had been subjected to torture and forced to confess guilt, and that that confession had been used by the courts to convict him and sentence him to death, despite requests by the author's family and representative that such evidence should have been suppressed because it had been obtained under torture; and (b) he had not had access to a lawyer until September 2016, when he had been allowed to appoint one to represent him before the Specialized Criminal Court in Riyadh, but not to have any contact with him. The Committee recalled that, according to article 13 (1) of the Convention, States parties must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants. That entailed the respect of all components of the right to fair trial, including the right to be represented and not to be submitted to any direct or indirect physical or undue psychological pressure from

the investigating authorities, with a view to obtaining a confession of guilt. In that connection, the Committee recalled that, in cases involving capital punishment, it was axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings, and that information obtained as a result of torture must always be excluded from the evidence. It further recalled that, in accordance with article 4, the State party was under an obligation to promote effective access to justice for all persons with disabilities without discrimination of any kind on the basis of disability. In that regard, the Committee recalled that the rights and obligations with respect to equality and non-discrimination outlined in article 5 raised particular considerations with respect to article 13, which, among others, called for the provision of procedural accommodations. Such accommodation was distinguishable from reasonable accommodation in that it was not limited by disproportionality. In the case of the author, the State party was therefore under the obligation to provide all procedural accommodation that was necessary to enable his effective participation in the process, taking into account his hearing impairment. The Committee noted that, according to the available information, the State party had not taken any measure in that regard. In view thereof, the Committee concluded that the State party had violated the author's rights under article 13 (1), read alone and in conjunction with article 4, of the Convention.

22. Regarding the author's complaint under article 25 of the Convention, the Committee noted that the author had had to wait for more than four months before getting access to the health services that he had been requesting; the authorities of the State party had not enabled him to gain access to the surgery that he had needed to avoid the complete loss of hearing in his right ear, despite having been informed of the urgency of that intervention; and, as a consequence, the author had indeed completely lost hearing in his right ear. The Committee therefore concluded that the State party had violated the author's rights under article 25 (b) of the Convention.